

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CHRISTOPHER WILLIAMS,)	
)	No. CV-12-5017-CI
Plaintiff,)	
)	ORDER DENYING PLAINTIFF'S
v.)	MOTION TO COMPEL PRODUCTION
)	REQUEST, DENYING PLAINTIFF'S
JACKIE FLUAITT, ERIC ASKREN,)	MOTION IN OBJECTION, AND
TIM SNYDER, JEFFERY UTTECHT,)	GRANTING PLAINTIFF'S MOTION
and JOENNE McGERR,)	FOR CONTINUANCE
)	
Defendants.)	

BEFORE THE COURT is an *ex parte* document submitted by Defendant in response to the court's ruling on Plaintiff's Motion to Compel, ECF No. 86, 87; Plaintiff's "Motion in Objection of the Ruling of Magistrate Cynthia Imbrogno on How Depositions Will Be Taken," ECF No. 96; Plaintiff's Motion to continue the hearing on summary judgment; ECF No. 100; and Plaintiff's Motion to Strike Defendants' Response to Plaintiff's Objection to Ruling of Magistrate, ECF No. 104. The Motions are consolidated and heard on the date signed below. Plaintiff, an inmate in the custody of the Washington State Department of Corrections at Monroe Correctional Complex, Twin Rivers Unit, is proceeding *pro se* and *in forma pauperis*. Defendants are represented by Assistant Attorneys General Candie M. Dibble and Kevin C. Elliot. The parties have not consented to proceed before a magistrate judge.

Plaintiff, a practitioner of the Islamic Faith, filed a civil rights complaint pursuant to 42 U.S.C. § 1983 and the Religious Land

1 Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc.
2 He alleges Defendants prevented religious conduct mandated by his
3 faith. He seeks declaratory and injunctive relief and monetary
4 damages. ECF No. 8.

5 **A. Motion to Compel, ECF No. 23: Supplemental Ruling on Request**
6 **for Production No. 1**

7 On January 9, 2013, the court granted in part Plaintiff's
8 motion to compel discovery and ordered an *in camera* review of emails
9 withheld by Defendants under the work product privilege. See ECF
10 No. 86. Defendants timely submitted the disputed emails and
11 reiterated their position that these documents were prepared by
12 named parties in anticipation of litigation. A document created in
13 anticipation of litigation is one that "would not have been
14 generated but for the pendency or imminence of litigation." *In re*
15 *Grand Jury Subpoena, Mark Torf/Torf Env'tl. Mgmt., (Torf)*, 357 F.3d
16 900, 907 (9th Cir. 2004). The document may be prepared by a party.
17 *Id.* The court has examined the withheld emails and finds they fall
18 under the work product doctrine as they are between two named
19 Defendants and discuss Plaintiff's allegations, related prison
20 policy, the eventuality of litigation, and possible defenses.
21 Therefore, the withheld emails are work product and not
22 discoverable. Accordingly, Plaintiff's Motion to Compel Production
23 Request No. 1 is **DENIED**. FED. R. CIV. P. 26(b)(3).

24 **B. Motion in Objection of Magistrate Judge's Ruling, ECF No. 96,**
25 **and Motion to Strike Defendants Response, ECF No. 104**

26 On January 9, 2013, the court denied Plaintiff's request for an
27 Order directing Defendants to facilitate oral depositions in the
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1 prison. ECF No. 86. In his "Motion in Objection," Plaintiff asks
2 the court to reverse the ruling because he now has funds to pay for
3 cassette tapes required for oral depositions.

4 A magistrate judge has the power to "hear and determine any
5 pretrial matter pending before the court" with certain enumerated
6 exceptions not at issue here. 28 U.S.C. § 636(b)(1). A magistrate
7 judge's ruling on a discovery matter may be reconsidered by the
8 court only where there has been a showing that the magistrate
9 judge's order "is clearly erroneous or contrary to the law." *Id.*
10 Because Plaintiff makes no such showing, Plaintiff's Motion in
11 Objection of the undersigned's ruling is **DENIED**. Even if this court
12 construes Plaintiff's "Motion in Objection" as a timely filed Motion
13 for Reconsideration, it is without merit.

14 A motion for reconsideration is "an extraordinary remedy to be
15 used sparingly in the interests of finality and conservation of
16 judicial resources." *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th
17 Cir. 2003). The court will grant a motion for reconsideration only
18 upon a showing of newly discovered evidence,¹ clear error, or an
19 intervening change in controlling law. *389 Orange St. Partners v.*
20 *Arnold*, 179 F.3d 656, 665 (9th Cir. 1999). Plaintiff is unable to
21 make a showing that any of these circumstances apply. Accordingly,
22 Plaintiff's Motion, construed as a Motion for Reconsideration, is

23
24 ¹ Plaintiff's change of circumstances regarding access to
25 funds to buy cassette tapes is not newly discovered evidence. In
26 addition, his ability to buy cassette tapes does it affect the
27 court's refusal to order deposition procedures where, as here,
28 alternative methods are available.

1 **DENIED**, and the January 9, 2013, Order stands. Plaintiff's Motion
2 to Strike Defendants' Response, ECF No. 104, is **DENIED**.

3 **C. Motion for Continuance, ECF No. 100**

4 Defendants' filed a Motion for Summary Judgment with supporting
5 documentation and briefing on November 28, 2012. ECF No. 65-69. A
6 *Notice to Pro Se Litigants of Summary Judgment Rule Requirements* was
7 sent to Plaintiff by Defendants and by the Clerk of the Court on
8 November 28, 2012. ECF No. 71, 72. The Motion was set for hearing
9 on January 18, 2013. ECF No. 70. Plaintiff moved for a continuance
10 on December 18, 2012, and the hearing was reset for February 19,
11 2013. ECF No. 81. On January 2, 2013, Plaintiff filed his Motion
12 for Summary Judgment and Response to Defendants' Motion for Summary
13 Judgment, supported by exhibits and Statement of Facts. ECF No. 82-
14 84.

15 On February 21, 2013, Plaintiff filed this Motion to Continue
16 the hearing on summary motion, indicating delays in prison approval
17 for inmate to inmate correspondence have prevented him from
18 obtaining witness declarations to support his Motion for Summary
19 Judgment. ECF No. 100. Plaintiff submits a letter from Grievance
20 Coordinator M. Fairchild stating that delay in processing
21 Plaintiff's November 2012 requests for inmate correspondence was not
22 Plaintiff's fault. ECF No. 100, Exhibit 1.

23 Defendants oppose further continuation, noting that both
24 parties have filed and served Motions for Summary Judgment with
25 supporting briefing and exhibits. ECF No. 102. However, in view of
26 evidence that prison procedures delayed Plaintiff's ability to
27 obtain supporting evidence, a continuance is reasonable.

1 Accordingly, Plaintiff's Motion for Continuance is **GRANTED**.

2 **IT IS ORDERED:**

3 1. Plaintiff's Motion to Compel Production Request No. 1 is
4 **DENIED**.

5 2. Plaintiff's Motion in Objection of the Ruling of
6 Magistrate Cynthia Imbrogno on How Depositions Will be Taken, **ECF**
7 **No. 96**, is **DENIED**.

8 3. Plaintiff's Motion to Strike Defendants' Response to
9 Plaintiff's Motion in Objection, **ECF No. 104**, is **DENIED**;

10 4. Plaintiff's Motion for Continuance of Summary Judgment
11 hearing, **ECF No. 100**, is **GRANTED**.

12 5. Summary Judgment Hearing without oral argument is reset
13 for **APRIL 29, 2013**. **No further continuances shall be granted**.

14 The Court Executive is directed to file this Order and provide
15 copies to Plaintiff and counsel for Defendants.

16 DATED April 18, 2013.

17
18 S/ CYNTHIA IMBROGNO
19 UNITED STATES MAGISTRATE JUDGE
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